

DOCKET SECTION

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE CLERK

Docket No. R97-1

POSTAL RATE AND FEE CHANGES, 1997

OBJECTION OF UNITED STATES POSTAL SERVICE TO INTERROGATORIES OF
DAVID B. POPKIN DIRECTED TO THE UNITED STATES POSTAL SERVICE
(DBP/USPS-103 THROUGH 343)
(December 11, 1997)

In accordance with Rules 25 and 26 of the Commission's Rules of Practice and Procedure, the Postal Service hereby objects to interrogatories DBP/USPS-103 through 343, directed to the Postal Service and filed by David B. Popkin on December 1, 1997. Interrogatories DBP/USPS-103 through 257 all concern how the Postal Service and the recipient handle return receipt mail (and other accountable mail) addressed to a large variety of different recipients. Interrogatories DBP/USPS-258 through 343 concern whether there are provisions in place to ensure that Express Mail will be delivered, for all addresses within each of the 85 Postal Service Districts, in order to meet the applicable Overnight or Second Day delivery standards, and, if not, to provide full details about any exceptions. These interrogatories are not timely, lack material relevance to the issues in this proceeding, and are unduly burdensome.

Timeliness

All of these interrogatories are limited to issues that were the subject of testimony by witnesses Needham, Plunkett, and Sharkey, concerning delivery of accountable and return receipt mail and Express Mail delivery standards. In general, discovery on the Postal Service's direct case ended on September 17, 1997. These

requests moreover are not proper as Special Rule 2E discovery because they concern issues that are addressed by the Postal Service's direct case.¹ In fact, handling of return receipt mail in conjunction with delivery to the recipient was addressed by witness Plunkett at length in written and oral cross-examination, conducted in part by Mr. Popkin.² Interrogatories DBP/USPS-258–343 also concern matters addressed in the Postal Service's direct case.³ Moreover, the OCA conducted cross-examination of witness Sharkey on Mr. Popkin's behalf concerning the Postal Service's ability to meet Express Mail delivery standards.⁴ All of Mr. Popkin's interrogatories thus are "an attempt to take a second-crack" at parts of the Postal Service's direct case "past the deadline for doing so," a practice rejected in Presiding Officer's Ruling No. R87–1/138 at 5. Rule 2E is not available to try new cross-examination strategies at this late date in the proceedings.

Mr. Popkin's interrogatories are not permitted under Special Rule 2E for additional reasons. Presiding Officer's Ruling No. MC96–3/36 at 2, concluded that Special Rule 2E "is limited to when a participant needs data available only from the Postal Service in order to prepare testimony to rebut participants other than the

¹ See Presiding Officer's Ruling No. R87–1/138, at 4 (rule 2E allows parties additional time to identify and request data "where such data is uniquely accessible to the Postal Service, and is not addressed by the Postal Service's case....").

² Tr. 3/865–69, 915–24, 987–93, 1018–27, 1031–32.

³ See, e.g., USPS-T-33 at 6.

⁴ Tr. 4/2126-29.

Postal Service.”⁵ It is not clear how Mr. Popkin intends to utilize in his testimony the results of the burdensome surveys that he would have the Postal Service conduct on his behalf, especially in order to rebut the testimony of intervenors yet to be filed.⁶ Moreover, the questions do not request readily available “data” or “operating procedures”. Instead, the questions request the Postal Service to develop new information based on inquiries to the Field.

Relevance to Material Issues

Presiding Officer’s Ruling No. R97-1/21, at 4, stated that “[r]ate proceedings are not a forum for general oversight of Postal Service operating practices.” Presiding Officer’s Ruling No. R97-1/53, at 5, stated that “operational details of a service are generally beyond the scope of material issues in a rate proceeding.” Interrogatories DBP/USPS-103-343 generally concern operational details that would not be expected to have a significant role in the classification, rate, and fee issues that the Commission must decide in this proceeding.

⁵ That ruling, at page 2, also stated that:

Special Rule 2.E. applies for the limited purpose of allowing parties to develop evidence for submission as rebuttal to the direct cases of participants other than the Postal Service. Discovery for the purpose of developing evidence for submission as rebuttal to the direct case of the Postal Service is generally to be completed before oral cross-examination of Postal Service witnesses.

⁶ Mr. Popkin’s need for responses to these interrogatories in order to prepare his testimony is especially dubious given the fact that, to the best of counsel’s knowledge, Mr. Popkin has never filed any testimony in prior cases in which he has intervened.

Undue Burden

Mr. Popkin has filed 240 new interrogatories, consisting of 2,410 parts.⁷ Moreover, the interrogatories would require obtaining substantial amounts of information from Field locations. The Postal Service therefore objects that the interrogatories are unduly burdensome.

Interrogatories DBP/USPS-103 through 105 ask for detailed information about the *handling of return receipt mail addressed to the three different government entities*. Identifying the proper individuals to respond, obtaining the information, and preparing the response could take at least one hour per interrogatory. Interrogatories DBP/USPS-106 through 171 concern the treatment of accountable mail addressed to a variety of government locations, including how delivery is made, the timing of delivery, volume information, and compliance with regulations. An optimistic estimate of the burden to respond to the 17 parts would be two hours per interrogatory.⁸ Interrogatories DBP/USPS-172 through 257 ask 13 questions about the distribution and impact of the August 1, 1996 Sandra Curran letter concerning proper handling of return receipt mail, for each of the 85 postal Districts. Identifying the proper individuals to respond, obtaining the information, and preparing the response would take an estimated two hours per interrogatory. Given that these interrogatories ask about unusual recipients and/or specialized situations and locations, these burdens are not justified by the limited contribution that responses would make to the record.

⁷ While DBP/USPS-173 through 257 would include enough numbers for 85 interrogatories, it appears that Mr. Popkin is only asking 84 interrogatories (for each of 84 Districts), so there would be no interrogatory DBP/USPS-257.

⁸ Interrogatory DBP/USPS-120 concerns "mail addressed to various agencies of the Federal Government in Washington DC", and would be expected to take 20 hours to identify the large number of such agencies, and obtain information from each of them.

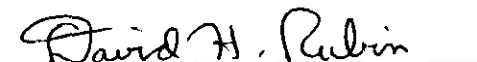
With respect to interrogatories DBP/USPS-258-343, the Postal Service generally believes there are procedures in place to ensure compliance with the Express Mail delivery standards. However, Mr. Popkin's interrogatories may be construed as requesting specific inquiries at each District to (a) determine what procedures are in place, and (b) identify any exceptions where the procedures would not apply. If this is Mr. Popkin's intent, the requested survey of all the Districts would be unduly burdensome. Identifying the proper individuals to respond, obtaining the information, and preparing the response could take at least one hour per interrogatory, for a total of 85 hours. Such a burden is not justified by the limited value such an inquiry would provide to the record in this proceeding.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

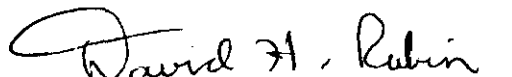
By its attorneys:

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.


David H. Rubin

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